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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,442	01/23/2001	Lester A. LaMotte	960377.CII	2425

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NIKOLAI MERSEREAU & DIETZ, P.A.  
820 INTERNATIONAL CENTRE  
900 SECOND AVENUE SOUTH  
MINNEAPOLIS, MN 55402

EXAMINER

WOOD, KIMBERLY T

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 12/18/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

ES

# Office Action Summary

Application No.  
09/767,442

Applicant(s)  
LaMotte

Examiner  
Kimberly T. Wood

Art Unit  
3632



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan 23, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above, claim(s) 5-10, 12-14, 16-19, 23-25, and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11, 15, 20-22, 26, and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 20) ☐ Other:

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This is the first office action for serial number 09/767,442, entitled Collapsible Display System, filed on January 23, 2001.

*Election of Species*

This application contains claims directed to the following patentably distinct

Species of the claimed invention:

Species I drawn to Figures 1-22B

Species II drawn to Figures 23 and 24

Species III drawn to Figures 25A-25D

Species IV drawn to Figures 25E and 25F

Species V drawn to Figures 26A-26D

Species VI drawn to Figures 27A-27H

Species VII drawn to Figures 27J

Species VIII drawn to Figures 27K

Species IX drawn to Figures 27L and 27M

Species X drawn to Figures 28A and 28B

Species XI drawn to Figures 29

Species XII drawn to Figures 30A-30D

Species XIII drawn to Figure 31

Species XIV drawn to Figures 32A and 32B

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Species XV drawn to Figures 33-36, 42, and 43A-43D

Species XVI drawn to Figures 37 and 38

Species XVII drawn to Figures 39A, 39B, 40, and 41

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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During a telephone conversation with C. G Mersereau on December 12, 2001 a provisional election was made with traverse to prosecute the invention of Species XVII, claims 1-4, 11, 15, 20-22, 26, and 28. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-10, 12-14, 16-19, 23-25, 27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 11, 15, 20-22, 26, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 11, 15 the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

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Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 11, 15, 20-22, 26, and 28. provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/480,018. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application 09/480,018 discloses a pair of adjustable telescoping member or mounting members flexible telescoping brace members, a central member, press fit end hubs, outer hub sections, outer hub sections, slip fitting segments, a resilient cord, .

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-4, 11, 15, 20-22, 26, and 28. rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim of U.S. Patent No. LaMotte 6,012,688 in view of Allen 4,017,152. LaMotte discloses mounting members flexible brace members, press fit end hubs, outer hub sections, outer hub sections, slip fitting segments, a resilient cord. Lamotte discloses all of the limitations of the claimed invention except for

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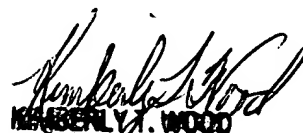
telescoping members. Allen discloses that it is known to have a display unit having mounting members and brace member being telescopic with releasable locking device (Figures 1 and 15).

Claims 1-4, 11, 15, 20-22, 26, and 28. rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim of U.S. Patent No. LaMotte 5,839,705 in view of Allen 4,017,152. LaMotte discloses mounting members flexible brace members, press fit end hubs, outer hub sections, outer hub sections, slip fitting segments, a resilient cord. Lamotte discloses all of the limitations of the claimed invention except for telescoping members. Allen discloses that it is known to have a display unit having mounting members and brace member being telescopic with releasable locking device (Figures 1 and 15).

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Wood whose telephone number is (703) 308-0539. The examiner can normally be reached on Monday-Thursday from 7:30 AM to 5:00 PM. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168. The fax number for this Group is (703) 305-3691.

Kimberly T. Wood  
December 14, 2001

  
KIMBERLY T. WOOD  
PATENT EXAMINER  
AU3632